

### **REMARKS**

These remarks are responsive to the Office Action mailed June 26, 2008 ("Office Action"). The Office Action has been received and carefully considered. Reconsideration of the current objections/rejections in the present application is also respectfully requested based on the following remarks.

Claims 16-28 are currently pending in the present application. Claims 1-15 are cancelled without prejudice or disclaimer to the subject matter contained therein. Claims 16-28 have been added, with claims 16, 23, and 28 being the independent claims. Claims 16-28 are similar in scope to previous claims 1-15. The claims have been added to more clearly articulate the subject matter. No new matter has been added.

Applicant traverses all pending rejections. Reconsideration of the current rejections in the present application is respectfully requested based on the following remarks.<sup>1</sup>

#### **Specification Objections**

The Office Action, at 2 objects to various informalities in the specification.

Regarding the objection that the specification requires a statement on page 1 of the claim to foreign priority, Applicant respectfully disagrees that this is a requirement. To the extent the Examiner maintains this objection, Applicants respectfully request a citation to the rule that sets forth such a requirement.

Regarding the objection to the specification regarding the term "lid rim 2," this objection is moot in view of amendments included in the attached substitute specification.

Regarding the objection to the specification as lacking reference to element 1a, which is shown in figure 4, this has been corrected in the attached substitute specification.

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<sup>1</sup> As Applicant(s)'s remarks with respect to the Examiner's rejections are sufficient to overcome these rejections, Applicant(s)'s silence as to assertions made by the Examiner in the Office Action or certain requirements that may be applicable to such rejections (e.g., assertions regarding dependent claims, whether a reference constitutes prior art, whether references are legally combinable for obviousness purposes) is not a concession by Applicant(s) that such assertions are accurate or such requirements have been met, and Applicant(s) reserve(s) the right to analyze and dispute such in the future.

Regarding the objection to the specification that “page 5, line 29, recites “the inner surface 1” previously referred to as the membrane,” the substitute specification includes changes to more clearly articulate this portion of the disclosure. It should be noted that the specification describes a membrane as a closure layer that is very thin. Applicant respectfully submits that there is no ambiguity between these terms as they are described in the specification.

Regarding the objection to the Abstract, Applicant would like to note that the abstract has been amended in accordance with the Examiner’s suggestions.

Regarding the objection to the “u” as not having an accent over it, Applicant respectfully submits that the accent mark was placed over the “u” in figures 1 and 4 to distinguish between another character. Thus, the Examiner’s assumption that “u” represents the deflection is correct.

In view of the above, Applicant respectfully requests withdrawal of the objections to the specification.

### **Claim Objections**

The Office Action, at page 3, objects to claim 9 as being of improper dependent form for failing to further limit the subject matter of a previous claim. Claim 9 has been amended to address this issue. Accordingly, Applicant respectfully requests withdrawal of the objection to claim 9.

### **35 USC § 112**

The Office Action, at page 3, objects to claims 3-7 as lacking antecedent basis. Specifically, claims 3-7, which depend from claim 2, recite “the angle differing from zero” and “the angle ( $\alpha_2$ ).” The Examiner alleges that claim 2 does not provide proper antecedent basis for these terms. Claim 2 has been amended to address this issue and provide explicit antecedent basis. Accordingly, Applicant respectfully requests withdrawal of the rejection to claims 3-7.

Further, because there is now clear antecedent basis for all of the terms recited in claims 3-7, the Examiner will no longer need to refer to claim 1 to ascertain the meaning of the terms-in-question (*see*, Office Action, page 3, numbered paragraph 8).

**35 USC § 102(b)**

The Office Action rejects claims 1-3, 5, 8-12, 14-15, 17, 20-24 and 26 under 35 U.S.C. § 102(b) as allegedly being anticipated by U.S. Pat. Pub. No. 2002/0050493 to Ball et al. ("Ball").

With regard to independent claim 1, which will be referred to in its representative capacity, the claim recites, among other things, *a lever ring compris[ing] a continuous flat web which radially outwardly merges into an edge rim of the lever ring, a continuous surrounding groove extending between the edge rim and the flat web*. Ball does not teach or suggest at least these features. Rather, Ball simply discloses an entire lid or cover. (see Ball, Figure 21, element 174). As stated in MPEP § 2131, "[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." Verdegaal Bros. v. Union Oil Co. of California, 814 F.2d 628, 631 (Fed. Cir. 1987). It is not believed that Ball teaches or even suggests this recitation. As such, Applicants respectfully submit that the substance of the outstanding rejection can not be applied to current claim 1.

Numbered paragraphs 10 and 11 of the Office Action display figures 12 and 13 of the Ball disclosure, which is only a portion of a rather voluminous reference. Ball discloses a non zero angle in figure 12, but not *a lever ring compris[ing] a continuous flat web which radially outwardly merges into an edge rim of the lever ring* as recited in claim 1. Rather Ball discloses a full lid. Figures 12 and 13 of Ball are excerpts or parts of the device shown in Ball figure 1 in perspective view and in Ball figures 15 and 21 in a top view and in a vertical section in a side view.

Referring specifically to figure 21 of Ball, this figure shows that no edge rim of the lever ring (or "lid ring") is present. Rather, an opening with inner curls, which is a small opening, not taking the whole round of the lid ring as could be assumed in figure 12 and figure 13 as singularities **without their context**. Figure 21 of Ball, however, illustrates Ball figures 12 and 13 in their appropriate context. Perspective figures 24 and 23 of Ball show that not only cans may be closed, but also bottles with a certain lid cover 174. All these devices cannot be called a "lid ring" which is used for larger can bodies. Its supply flange it is not provided by the bottom 20 as shown in figure 1. In the invention as presently claimed, a flange directed radially inwards is

only provided by the lid ring with the outer ring 2, the inner groove N and the inner flat web that supports or gives support for the sealing layer 1.

A lid ring with an inner opening is functionally and structurally a different device than the whole cover or lid shown in figure 21 of Ball. The corresponding description passage on page 5, paragraphs [46] [47] shows that this is a fragmentary elevational view, not showing the whole context, but only a part of a context. Page 2, paragraph [12] shows the disclosure of Ball to be a frustoconical angular flange found in a portion of the lid. Only a portion is shown there and this flange might be projecting upwards, but not fully around the lid, instead only in a (small) portion of said lid.

Additionally, this size of the opening is mentioned to be about one inch, which is not the usual or regular size a lid ring spans over for closures. Usually a lid ring is for a very large opening, having support in the flat web that is inclined according feature (ii) of both independent claims 1 and 2 and this one goes round the whole can body 20 that is closed. It actually goes around the whole lid ring, or call it the "very closed" to the lid rim or outer ring (2) that serves as a reference. Additionally, both independent claims recite a *groove extending between the edge rim and the flat web*. This recitation is neither taught or disclosed by Ball.

Claim 1 currently recites an edge rim, the continuous groove and the flat web. All of these are rotationally symmetrical, and therefore the amendment to include **the surrounding groove** is implicitly contained in the set of rim, continuous groove and inclined flat web. The web and the rim are on the both sides of the continuous groove in claim 1 as currently recited. This claimed feature is not taught or disclosed by Ball.

The counters ink groove recited in the claim as a continuous surrounding groove is not a criticality in prior art, as it can be omitted there, see for example Ball figure 2a or the other form of can lid shown in Ball figure 21, omitting the conventional counter sink (*see* Ball, page 5, paragraph [54]).

Numbered paragraph 12 of the Office Action applies figures 13 and 12 of Ball to claim 2. The same distinction over Ball as argued for claim 1 is present in claim 2. The lever ring or lid ring (these two terms are synonymous) are customarily shown in the documents described in the "background" section of the present application. They have a different shape in the skilled man's understanding. The lid ring might be more common in use for insertable lids, and the lever ring

might be more common in use for sealing foils that are sealed to the inclined web as invented by our claimed invention. As shown in the third paragraph on page 1 of the present application, the lid rings have been used for push-in lids as mentioned above. The lever ring is not usually used for push-in lids, but is used for sealed on foils or films as explained in the second paragraph on page 1.

The lever ring of independent claim 2 is specifically recited as having those three items mentioned for claim 1: the edge ring, the continuous groove and the upward inclined flat web. These three items are all surrounding and no panel or remaining metal lid is left inside, to cover the opening. This is exclusively done with the sealed closure layer, as is recited in claim 2. The portion 164 in figure 21 of Ball is not a feature recited in the claimed invention (*see* Ball, page 14, left column, first paragraph). It is mentioned in this cited portion of Ball that a planar upper surface 164 of the lid **extends all the way to the raised angular rim 166**. Therefore, this planar surface is part of the closure and covers a substantial area of the opening of the body.

Further, it should be noted that figures 22 and 24 of Ball, and the accompanying description at page 14, paragraphs [149] and [160], fail to teach or disclose a *lever ring comprising a continuous flat web which radially outwardly merges into an edge rim of the lever ring, a continuous surrounding groove extending between the edge rim and the flat web*.

The arguments presented on page 5 of the Office action rely on figure 13 of Ball. As explained above, this figure is taken out of context of the Ball reference as a whole. When viewed in the context of Ball, the Office Action's reliance on figure 13 is misplaced.

The field of application of lever rings is substantially different from those closures that are applied to DWI cans having high interval pressure (*see* Ball page 7, paragraph [84], and page 1, paragraph [02]). This high pressure inside and burst *proof* is a substantial criticality of Ball. Also other criticalities join. The opening size with respect to the large opening ends (LOE) (*see* Ball page 9, [96]) and the flow resistance or the pour rate. This is explained at Ball paragraph [101] on page 9. The burst pressure, the small size of opening to satisfy the high pressure, the inclined slope and a substantial or satisfactory pour rate all together give criticality to prior art. This is different than the claimed invention. The claimed invention is not specifically operating high pressure carbonated drinks, as lever rings are usually not applied to such DWI bodies. Further, the claimed invention does not have criticality with respect to inside pressure or

any pour rate. The pour rate is at maximum, as the lever ring as such gives the full opening of the body 20 for emptying the content or taking out the content from this body 20. All of that has to be moved is the closure layer 1 that is sealed an the surrounding web around the whole opening and on the slanted or sloped flat web having that angle above zero.

Claim 2 includes similar recitations argued above with respect to claim 1. For at least these reasons, the 35 U.S.C. § 102(e) rejection to claim 2 is improper as all of the claimed features are not taught or disclosed by Ball.

Claims 3, 5, 8-12, 14, 15, 17, 20, 22-24, and 26 are allow dependent on claims 1 or 2 and therefore include all of the recitations of the independent claims. As such, these claims are allowable for at least the reasons discussed above with respect to independent claims 1 and 2. Additionally, these claims recite additional features which are neither taught nor disclosed by Ball.

### **35 USC § 103(a)**

The Office Action rejects claims 4, 6-7, 16, and 18-19 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Ball.

All of claims 4, 6-7, 16, and 18-19 depend from claims 1 and 2 and are allowable for similar reasons. Specifically, Ball fails to teach or suggest *a lever ring compris[ing] a continuous flat web which radially outwardly merges into an lid rim, a continuous surrounding groove extending between the edge rim and flat the web*, as is recited in independent claims 1 and 2. Further, Ball does not teach or suggest any of the additional recitations of claims 4, 6-7, 16, and 18-19. Indeed, the Examiner does not even assert. Accordingly, the claims which depend from independent claims 16 and 23 are allowable at least by virtue of their dependency on allowable independent claims. such.

Furthermore, Applicants submit that neither claims 1 nor 2 are obvious in view of Ball. The Ball reference does not show the lid or lever ring with a large inner opening and has some criticality with respect to pressure, burst resistance and pour rate. This is exemplified in paragraphs [95] to [101] on page 9, mainly in [101]. The pour rate needs to be satisfactory and therefore the size would not easily be enlarged, as the burst resistance needs to be present at all. Therefore, Ball does an optimisation work with respect to pressure, pour rate and size. They have

an opening that is not larger than about one inch. According to that invention, the size would not be enlarged and we cannot call it a design choice to change or modify the size of something that is called critical in prior art and needs to be at a low standard level to allow pour rate and burst resistance.

The claimed invention is different and we apply a surrounding flat web that is inclined along the whole surrounding groove. This is exemplified in further in pending claim 8, where we say that **the sealing zone** is surrounding and along the edge rim. Examiner called this claim not novel with respect to Ball in item (15), but did not take note that this "sealing strip" as it was before and now termed "sealing zone" is surrounding along the whole extension of the lid/lever ring. This is now being more specific by referring the surrounding sealing to the edge rim that necessarily goes around the whole device as such. Also, claim 14 as amended is not shown in Ball. Examiner applied in item (20) this teaching as contained in Ball, but necessarily the surrounding rim and the surrounding flat web next to the wedge shaped groove as something that is distinctly claiming the lid/lever ring apart from the technical term "lid/lever ring".

**CONCLUSION**

All of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicant therefore respectfully requests that the Examiner reconsider all presently outstanding objections and rejections and that they be withdrawn. Applicant believes that a full and complete reply has been made to the outstanding Office Action, and the present application is in condition for allowance. If the Examiner believes, for any reason, that a personal communication will expedite prosecution of this application, the Examiner is hereby invited to telephone the undersigned at the number provided below.

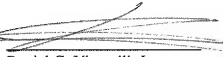
It is believed that a three (3) month extension of time is due in connection with filing this amendment. Applicant authorizes the Commissioner to charge the fee for a three-month extension of time to the undersigned's Deposit Account 50-0206. The Commissioner is hereby authorized to treat any current or future reply, requiring a petition for an extension of time for its timely submission as incorporating a petition for extension of time for the appropriate length of time. Applicant also authorizes the Commissioner to charge any additional fees to the undersigned's Deposit Account 50-0206.

Prompt and favorable consideration of this Amendment is respectfully requested.

Respectfully submitted,

HUNTON & WILLIAMS LLP

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